IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4127 OF 2005

Aysha Mohamed & Ors. ..Petitioners.

Vs.

The Board of Trustees of
the Port of Bombay ..Respondent.

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Mr. R.A. Thorat with Mr. Devendra Udani for the Petitioners.
Mr. Umesh Shetty with Mr. A.D. Fegade i/b M/s. Mulla & Mulla & CB & C. for the Respondents.

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CORAM: DR. D.Y. CHANDRACHUD, J.

27th June, 2006.

P.C. :

1. On 21st June, 1968, the Board of Trustees of the Port of Bombay let out to the Petitioners a plot of land admeasuring 111.67 sq. mtrs. on a monthly rent of Rs.335.01 under the Clock Tower at Sassoon Dock Estate. Under clause 11 the tenant was to give an undertaking that he will hand over vacant and peaceful possession of the plot, if the said plot is found to be affected by the scheme of development of Sassoon Dock Fishery Harbour. A sum of Rs.1,000/- was furnished as and by way of security which was liable to be forfeited if the surrender of the plot was not

effected, this being without prejudice to the rights of the trustees. The Petitioners accepted the terms on 22nd June, 1968 and a certificate of possession was executed by the Port Trust. The tenancy was terminated by a notice of termination dated 27th October, 1969. This was followed by a further notice dated 4th July, 1977 by which the Port Trust claimed that the arrears of compensation were due and payable. The suit for eviction was instituted in 1978. The suit was decreed by the Trial Court on 1st October, 2003. The decree has been confirmed in appeal by the Appellate Bench of the Small Causes Court.

2. The premises belonging to the Port Trust were exempted from the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the circumstances, the suit for eviction was filed under Section 41 of the Presidency Small Causes Courts Act, 1882. The Trial Court held that the tenancy has been validly terminated and that the Petitioner not being a protected tenant under the Rent Act, a decree for eviction will have to follow. The validity of the notice of termination cannot be and has not been disputed, before this Court. In fact, the cross examination of D.W.1 elicit the following answers :

> "I could not trace out any documents showing that, after receiving the notice from the plaintiffs, we have paid the rent to the plaintiffs. It is true that, after termination of the tenancy, whatever amount paid to the plaintiffs, the plaintiffs have issued the receipt not for the rent but for the compensation."

3. Two submissions have been urged on behalf of the Petitioners. The first submission is that the exemption which has been granted to the Port Trust under the provisions of the Rent Act is postulated on the basis that the Port Trust would not act as a private landlord but would act in public interest. This principle, it has been submitted, has been adverted to in the judgment of the Supreme Court in **M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay**[1]. There cannot be any dispute about the principle of law that the Port Trust being a public body is bound to act reasonably and fairly. In **Dwarkadas Marfatia**, the Supreme Court cited with approval the observations of Chief Justice M. C. Chagla in **Rampratap Jaidayal v. Dominion of India**[2] to the following effect :

> "It is not too much to assume, as the Legislature did in this case assume, that the very Government whose object was to protect the tenants and prevent rent being increased and prevent people being ejected, would not itself when it was the landlord do those every things which it sought to prohibit its people from doing, and

1 AIR 1989 SC 1642.
2 (1952) 54 Bom LR 927.

> therefore the underlying assumption of this exemption is that Government would not increase rents and would not eject tenants unless it was absolutely necessary in public interest and unless a particular building was required for a public purpose."

4. In **Baburao Shantaram More v. Bombay Housing Board**[3], the Supreme Court again held that the basis of the exemption from the Rent Act was that the housing board will not be actuated by a profit making motive so as to enhance the rent or to eject tenants from properties. More recently, the dispute relating to the Mumbai Port Trusts' claim for a revision in rents was dealt with by the Supreme Court in **J.H. Wadia v. Board of Trustees v. Port of Mumbai**[4]. The Supreme Court referred to the earlier decisions and held that while an instrumentality of the state which is exempt from rent control legislation has to act fairly, the state can revise the rent to check against inflationary tendencies, and meet the costs of maintenance, administration and taxes. Though in the contractual field the state and its agencies continue to be bound by the mandate of Article 14, the State which is exempt from rent control legislation should not be held down to the same shackles of rent law. The Supreme Court held thus :

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3 1954 SCR 572 : AIR 1954 SC 153.
4 2004(1) SCALE 341.

> ""In our opinion, in the field of contracts the State and its instrumentalities ought to so design their activities as would ensure fair competition and non-discrimination. They can augment their resources but the object should be to serve the public cause and to do public good by resorting to fair and reasonable methods. The State and its instrumentalities, as the landlords, have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can – and rather must – also save themselves from negative balances caused by the cost of maintenance, and payment of taxes and costs of administration. The State, as landlord, need not necessarily be a benevolent and good charitable Samaritan. The felt need for expanding or stimulating its own activities or other activities in the public interest having once arisen, the State need not hold its hand from seeking eviction of its lessees. However, the State cannot be seen to be indulging in rack-renting, profiteering and indulging in whimsical or unreasonable evictions or bargains."

A balance was therefore required to be struck :

> "A balance has to be struck between the two extremes. Having been exempted from the operation of rent control legislation the courts cannot hold them tied to the same shackles from which the State and its instrumentalities has been freed by the legislature in their wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt. Otherwise, it would tantamount to defeating the exemption clause consciously enacted by the Legislature. At the same time the liberty given to the

> State and its instrumentalities by the statute enacted under the Constitution does not exempt them from honouring the Constitution itself. They continue to be ruled by Article 14. The validity of their actions in the field of landlord-tenant relationship is available to be tested not under the rent control legislation but under the Constitution. The rent control legislations are temporary, if not seasonal; the Constitution is permanent and all time law."

5. In the present case, the Petitioner was in arrears of rent on the date when the notice dated 19th July, 1977 came to be issued. The cross examination of D. W. 1 has been adverted to earlier. The notice of termination which was issued under Section 106 of the Transfer of Property Act, 1982 has not been and cannot be questioned. A perusal of the grounds in the writ petition would also not demonstrate that any such submission has been urged before this Court in the pleadings. Nor for that matter was any such submission urged either before the Trial Court or the Appellate Bench of the Small Causes Court. Hence, there is absolutely no factual foundation for urging that the Port Trust has attempted to profiteer or that it has acted arbitrarily or malafide.

6. The second submission which has been urged is that the Port Trust came to be governed by the provisions of the Public

Premises (Eviction) Act, 1971. Therefore, it was urged that the Port Trust was not justified in seeking recourse to the provisions of a suit under the Presidency Small Causes Courts Act. There is no merit in this submission. The suit in the present case was instituted in 1978. By Amending Act 61 of 1980, the definition of the expression "public premises" in the Public Premises Act, 1971 was amended inter alia to include any premises belonging to or taken on lease by or on behalf of any Board of Trustees under the Major Port Trust Act, 1963. Therefore, in any case on the date when the suit was instituted, the provisions of the Public Premises (Eviction Act), 1971 were not attracted to the premises. That apart, the Public Premises (Eviction) Act provides a more expeditious remedy for the eviction of unauthorized occupants. It cannot be submitted that the provisions of Section 41 of the Presidency Small Causes Courts Act, 1882 are overridden or that the aforesaid remedy is not available.

7. The attention of the Court has been drawn during the course of the hearing to the proceedings which took place before the sole adjudicator in pursuance of the directions issued by the Supreme Court in the decision in **J.H. Wadia** (Supra). Before the

adjudicator, a statement has been made on behalf of the Petitioner that the Petitioner does not dispute the rent that has been fixed by the Port Trust of Rs.1792.30 from 1st April, 1994 with increases thereafter upto 31st March, 2000. The order of the adjudicator dated 21st June, 2006 notes that in so far as the dispute for the rent for the period from 1st February, 1981 is concerned, the Petitioner would raise the dispute, if any, during the course of the enquiry into mesne profits under Order 20 Rule 12 of the Code of Civil Procedure in the Small Causes Court in L.E. & C. Suit No.283/386 of 1978 which has been decreed and in which an enquiry is ordered and is pending. The Petitioner has agreed to pay interest at the rate of 6% on the arrears of revised rent from 1st April, 1994. On the basis of the aforesaid statement, the representation made by the Petitioner against the revision of rent was disposed of.

8. Counsel appearing for the Petitioner stated that the Petitioner is ready and willing to make a fresh representation to the Board of Trustees for the creation of a fresh tenancy subject to such terms and conditions as may be agreed upon between the parties. In order to facilitate the making of a representation and a

decision thereon by the Board of Trustees in accordance with law, there shall be a direction to the effect that it would be open to the Petitioner to make a representation to the competent authority within a period of two weeks from today. Upon such a representation being made, the Board of Trustees would be at liberty to take an appropriate decision in accordance with law within a period of three months thereafter. If this process is undertaken, the decree for eviction shall not be executed until 31st October, 2006. Subject to the aforesaid, the Petition is dismissed.